

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

GLENN DUNLAP	)	
	)	
Plaintiff,	)	
v.	)	CASE NO. 1:22-CV-310-HAB-SLC
	)	
NICHOLAS YODER, et al.	)	
	)	
Defendants.	)	

**OPINION AND ORDER**

On December 5, 2022, counsel filed a Stipulated Notice of Dismissal seeking to dismiss Counts II and III of the Complaint. (ECF No. 30). Federal Rule of Civil Procedure 41(a) provides the terms upon which a plaintiff can voluntarily dismiss an action. The Seventh Circuit has indicated that Rule 41(a) should be used for the limited purpose of dismissing an entire action rather than for dismissal of individual parties or piecemeal claims. *Taylor v. Brown*, 787 F.3d 851, 857 (7th Cir. 2015) (“Although some courts have held otherwise, we’ve said that Rule 41(a) does not speak of dismissing one claim in a suit; it speaks of dismissing an action—which is to say, the whole case.”) (first quoting *Berthold Types Ltd. v. Adobe Sys. Inc.*, 242 F.3d 772, 777 (7th Cir. 2001); then citing *Nelson v. Napolitano*, 657 F.3d 586, 588 (7th Cir. 2011)).

According to the Seventh Circuit, then, Rule 41(a) is not the proper vehicle for dropping individual parties or claims. *See Taylor*, 787 F.3d at 858 n.9. (“The parties indicated that it’s common practice in some district courts in this circuit to allow the voluntary dismissal of individual claims under Rule 41(a). If that is true, we remind judges to use Rule 15(a) instead.”). If Plaintiff desires, instead, to amend the complaint under Federal Rule of Civil Procedure 15(a) to remove Counts II and III, leave is so granted. Plaintiff has until December 20, 2022, to file an Amended Complaint.

**CONCLUSION**

For the reasons stated above, the Stipulation of Dismissal as to Counts II and III only (ECF No. 30), has no effect and will be termed as a pending motion on the Court's docket.

SO ORDERED on December 6, 2022.

s/ Holly A. Brady

JUDGE HOLLY A. BRADY  
UNITED STATES DISTRICT COURT